Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LANCE LOVE and JACK D. WHITE, JR.

Appeal No. 2004-1078
Application No. 09/765,121

ON BRIEF

Before COHEN, FRANKFORT, and STAAB, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 11, all of the claims remaining in this application. Claims 12 through 20 have been canceled.

As noted on page 1 of the specification, appellants' invention relates to an endless power transmission belt, also known as a V-belt, which belts are widely used for automotive and industrial purposes. A copy of representative independent claim

1 on appeal appears in the Appendix to appellants' brief (Paper No. 10).

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

White, Jr., et al. (White)	3,853,017	Dec. 10, 1974
Wolfe	4,022,070	May 10, 1977
Benedict et al. (Benedict)	6,066,188	May 23, 2000

Claims 1, 2, 5 through 8 and 10 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Benedict.

Claims 3 and 4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Benedict in view of White.

Claim 9 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Benedict in view of Wolfe.

Claim 11 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Benedict.

Rather than attempt to reiterate the examiner's full commentary with regard to the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellants regarding the rejections, we make reference to the examiner's answer (Paper No. 11, mailed June 3, 2003) for the examiner's reasoning in support of the rejections, and to appellants' brief (Paper No. 10, filed March 10, 2003) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we have made the determination that none of the examiner's rejections before us on appeal will be sustained. Our reasoning in support of this determination follows.

Appellants' independent claim 1 defines an endless "power transmission belt" having an inner compression section (12), an outer tension section (16), and a load-carrying section (17)

disposed between the compression and tension sections and having longitudinally extending load-carrying cords (18) formed of a high modulus material. In addition, claim 1 indicates that the power transmission belt further comprises a polymeric backing layer (19) disposed outwardly of the tension section and forming the outer surface of the belt, and a fabric layer (21) disposed between the backing layer and the load-carrying cords. In the paragraph bridging pages 3 and 4 of the specification, it is emphasized that the outer surface of the polymeric layer (19) defines the outer surface (20) of the belt and acts as a wear surface against a back side idler which is used in some belt drive systems, and also provides a higher coefficient of friction than a fabric backing which is frequently used. Attention is also directed to page 5, lines 9+, for further details concerning appellants' invention and advantages to be derived therefrom.

Looking at the examiner's rejection under § 102(a), we note that Benedict discloses and shows in Figures 1 and 2 a coated abrasive belt (1) with an endless seamless backing loop (5) having abrasive material in the form of abrasive grains (4) adhered to an outer surface thereof by adhesive layers (12, 15, 16). At column 6, lines 2-4, it is indicated that the inner

surface (6) of the belt, i.e., the surface opposite that coated with abrasive material, is generally smooth. Figure 3 of Benedict shows a perspective view of an endless seamless backing loop (now designated 30) without any abrasive material applied thereto, while Figure 4 shows a cross-sectional view of the endless seamless backing loop (30) taken along section line 4-4 in Figure 3.

In formulating the anticipation rejection of, for example, claim 1 on appeal the examiner looks to Figure 4 of Benedict and somehow reads what is clearly the top or outer layer of the backing loop (30) shown therein as "an inner compression section (34)" (answer, page 3) and the central portion (35) of the backing loop as an "outer tension section," with fibrous reinforcing layer (33) being "a load carrying section . . . disposed between the compression and tension sections." The examiner further characterizes the inner layer (36) of the endless seamless backing loop (30) of Figures 3 and 4 as "a polymeric backing layer . . . disposed outwardly of the tension section and forms the outer surface of the belt," and the fibrous reinforcing layer (32) as a fabric layer disposed between the backing layer and the load carrying cords.

For the reasons aptly advanced by appellants in their brief (pages 3-5), we agree that the portion of the coated abrasive belt (1) in Benedict focused on by the examiner, i.e., the endless seamless backing loop (5 or 30), is not an anticipation of the power transmission belt defined in appellants' claim 1 on appeal. More particularly, we note appellants' argument in the paragraph bridging pages 4 and 5 of the brief concerning how the orientation and inter-relationship of the layers in the backing loop of Benedict differ from that required in claim 1 on appeal. Accordingly, the rejection of independent claim 1 under 35 U.S.C. § 102(a) based on Benedict, and of claims 2, 5 through 8 and 10 which depend therefrom, will not be sustained.

We have also reviewed the patents to White and Wolfe relied upon by the examiner in rejections of dependent claims 3, 4 and 9 under 35 U.S.C. § 103(a). However, we find nothing in these patents which would overcome or supply that which we have found to be lacking in Benedict. Moreover, like appellants, we see no reason why one of ordinary skill in the art would have sought to modify the abrasive belt described and shown in Benedict to incorporate longitudinally extending ribs like those seen in the power transmission belt of White, especially since Benedict

expressly notes (col. 6, lines 2-4) that the inner surface (6) of the abrasive belt (1) is intended to be smooth. As for the examiner's rejection of claim 11 under 35 U.S.C. § 103(a) based on Benedict alone, we find no basis for the examiner's conclusion of obviousness and further note that the backing loop (5 or 30) of Benedict is specifically constructed so as to be endless and seamless, i.e., without ends joined together by a splice. The examiner's reference to column 20, lines 9-11, of Benedict is of no avail since that portion of the patent speaks of a possible "seam" in the internal structure, not a splice. Thus, it follows that the examiner's rejections of claims 3, 4, 9 and 11 under 35 U.S.C. § 103(a) will also not be sustained.

Based on the foregoing, the decision of the examiner rejecting claims 1, 2, 5 through 8 and 10 under 35 U.S.C. § 102(a) as anticipated by Benedict, and claims 3, 4, 9 and 11 under 35 U.S.C. § 103(a), is reversed.

REVERSED

IRWIN CHARLES COHEN Administrative Patent Judge	)	
CHARLES E. FRANKFORT Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
LAWRENCE J. STAAB Administrative Patent Judge	)	

CEF/lbg

JOSEPH V. TASSONE, ESQ.
DAYCO PRODUCTS LLC
1 PRESTIGE PLACE
DAYTON, OH 45401